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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

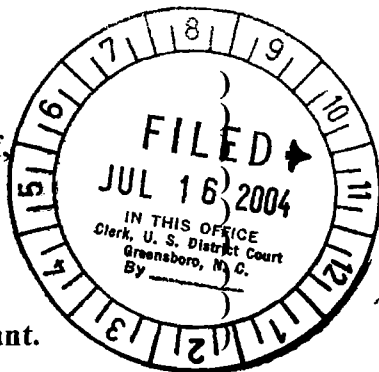
DIRECTV, INC.,

Plaintiff,

v.

GARY MOORE,

Defendant.



1:04CV00073

MEMORANDUM ORDER

SHARP, Magistrate Judge

Plaintiff DIRECTV, Inc. ("DIRECTV") is an electronic communications company that provides satellite television programming to subscribers. DIRECTV brought this action alleging that defendant purchased and used illegal pirate access devices to gain unauthorized access to DIRECTV's scrambled television programming. DIRECTV has brought many such cases in this district.

Plaintiff has set forth a number of causes of action in its complaint, and Defendant Moore now tests several of these claims by means of a Rule 12(b)(6) motion to dismiss for failure to state a claim. (Pleading No. 8.) Specifically, Defendant moves to dismiss Counts 2, 3, 5, 6, and 7 of the complaint. This court has entertained a large number of similar motions to dismiss in other cases brought by DIRECTV, and judges of this court have filed numerous Recommendations and Orders addressing these motions to dismiss. Because all or most of the legal issues raised by Defendant's motion to dismiss have been recently and persuasively dealt with by other judges of this court, the undersigned will not extensively address once again issues that have already been determined by the court. Rather, the court will, in part, adopt by reference other decisions within this court that resolve the motion to dismiss filed by Defendant.

Accordingly, **IT IS ORDERED** that:

1. The motion to dismiss Count 2, brought pursuant to 18 U.S.C. § 2511, is **DENIED** for reasons persuasively set forth by the court in *DIRECTV, Inc. v. Benson*, 1:03CV1132 (M.D.N.C. June 18, 2004, Recommendation).

2. The motion to dismiss Count 3, brought pursuant to 18 U.S.C. § 2512, is **GRANTED** for reasons persuasively set forth by the court in *DIRECTV, Inc. v. George Ingram*, 1:03CV00455 (M.D.N.C. Feb. 2, 2004, Recommendation), *adopted*, Apr. 27, 2004.

3. The motion to dismiss Counts 5 and 6, brought pursuant to N.C. Gen. Stat. § 14-113.5(c)(4) and N.C. Gen. Stat. § 15A-287, is **DENIED** since a plain reading of those statutes, and particularly the phrases “telecommunication service” and “electronic communication,” shows that Plaintiff’s claims fall within the language and apparent intent of the statutes.

4. The motion to dismiss Count 7, brought pursuant to N.C. Gen Stat. § 75.1-1, is **DENIED**. Under North Carolina law, N.C. Gen. Stat § 75.1-1 is to be broadly construed. *See Drouillard v. Keister Williams Newspaper Servs., Inc.*, 108 N.C. App. 169, 171-72 (1992). The court considers at this threshold stage of litigation that Plaintiff’s claim is sufficient, contrary to Defendant’s argument, to challenge alleged acts by Defendant that are deceptive or unfair, that affected commerce, and that injured DIRECTV. *See Dalton v. Camp*, 353 N.C. 647, 656 (2001).

**IT IS SO ORDERED.**



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P. Trevor Sharp, U.S. Magistrate Judge

July 16, 2004